
UNACCOMPANIED MINOR ALIENS: THE CASE OF LITHUANIA

Danguolė SENIUTIENĖ

Mykolas Romeris University
E-mail: dseniutiene@mruni.eu
ORCID ID: 0000-0002-7572-5239

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Abstract. *This article analyzes the situation of unaccompanied minors, asylum seekers and non-asylum seekers, coming to the Republic of Lithuania from third countries. Outside the scope of the investigation are unaccompanied minors who are: citizens of the European Union, a Member State of the European Free Trade Association or other persons who exercise the right of free movement of persons in accordance with the legal acts of the European Union, or family members of a citizen of the European Union, a Member State of the European Free Trade Association or a person exercising the right of free movement in accordance with European Union legislation, or third country nationals legally present in the Republic of Lithuania. The article also presents the legal and social aspects of the entry of unaccompanied minors into the Republic of Lithuania. The aim is to identify the activity of the institutions through the involvement and implementation of procedures (appointment of a legal representative, accommodation, interviewing, age determination, search for family members or other legal representatives, granting asylum procedures, etc.), when the arrival of an unaccompanied minors is established, identify problems and propose possible solutions. This theme was chosen because of the end of May, 2021 over 1,000 migrant minors entered the country illegally.*

Keywords: *unaccompanied minors, migration processes, asylum.*

Introduction

The free movement of persons is one of the fundamental principles of the European Union, the observance of which it ensures. All citizens of the European Union have the right to travel, reside, study, work, settle or provide services in other Member States without discrimination on grounds of nationality, race, religion, membership of a particular social group, or political option.

The processes of globalization and various conflicts have led to an intensification of migration around the world: migration flows, directions and volumes have changed. “As various statistics show, most European countries are facing a particularly rapid and marked increase in international migration and, in particular, in illegal immigration. The ever-increasing flows of immigrants to European countries over the last decade inevitably have an impact and encourage states to review their migration policies, regulatory instruments and adapt them to these influenced processes” (King, 2020, p.3). In order to improve the management of migration processes, the Member States of the European Union are committed to effectively managing the crossing of external borders, tackling migration difficulties and addressing future threats at those borders, thus contributing to the fight against serious crime with a cross-border dimension and a high level of internal security in the European Union. It must be emphasized, that all action must be taken with full respect for fundamental rights and the free movement of persons within the European Union.

It has to be stated, that migration processes often do not take place in accordance with the existing procedures or rules, for various reasons individuals leave their countries and choose the direction of migration to more developed geographical regions or the like (Shields, 2017, p. 24). Immigrants often cause resistance in the country, stimulate political, legal or even social debates, create fears, often incite various radical positions, demonstrate open racism and create

a lack of social solidarity (Laso, 2020, p. 12). In addition to migration flows, trafficking networks, work or sexual exploitation, poor or illegal living conditions, despair and frustration are often found. Unaccompanied minors account for a significant share of the overall flow of illegal immigrants. Lithuania is no exception, during the last half of this year more than 4 thousand illegal immigrants crossed the border of the Republic of Lithuania; more than 1,000 minors currently live in the camps of immigrants.

The article, using the analysis of scientific literature and legal acts, aims to assess the aspects of legal regulation and the general situation regarding unaccompanied minors, to identify problematic aspects, and to suggest possible solutions.

Aspects of International and regional protection unaccompanied minors

The General Assembly of the United Nations at 1989 concerned, that the situation of children in many parts of the world remains critical due to unequal social conditions, natural disasters, armed conflicts, exploitation, illiteracy, hunger and disease, and convinced of the need for immediate and effective action at national and international level called on States to join and contribute the implementation of the provisions of the Convention on the Rights of the Child. States Parties to the Convention undertakes “to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures”.

Particular attention is paid to children who have lost their environment for one reason or another. The Convention on the Rights of the Child states that: “A child who has temporarily or permanently lost his or her family environment or who is unable to be in that environment because of his or her interests is entitled to special protection and assistance provided by the State” (The Convention on the Rights of the Child, 1989).

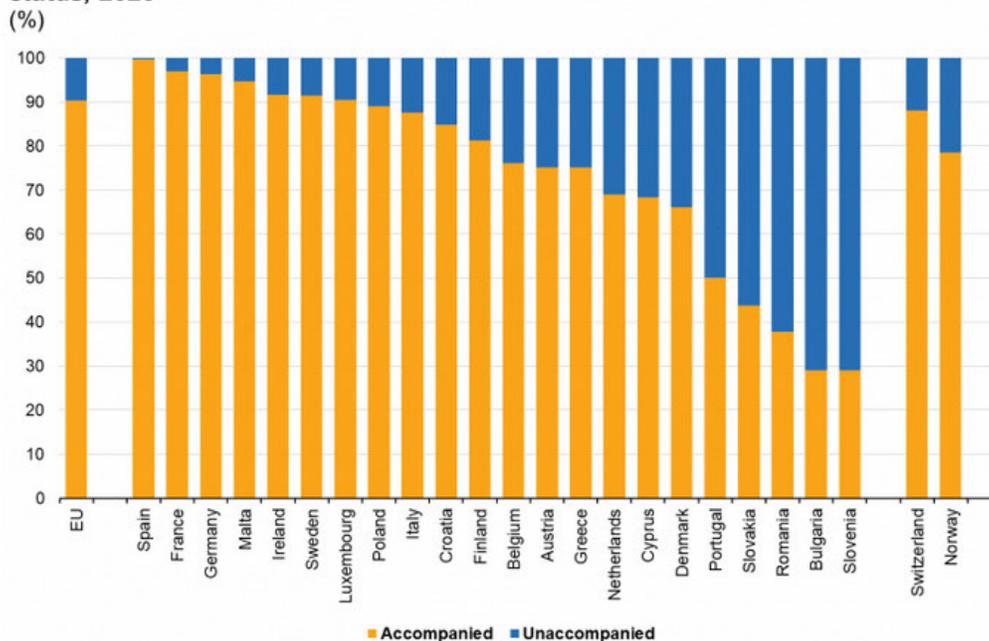
The Convention on the Rights on the Child also states: “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.” (The Convention on the Rights of the Child, 1989).

Considering the ideas and content of the Convention on the Rights of the Child in 2005 published by the United Nations General Comment No. 6 (2005) states, what: „Unaccompanied minors outside their country of origin or residence are increasingly encountered”. There are varied and numerous reasons for a child being unaccompanied or separated, ranging from: persecution of the child or the parents; to international conflict and civil war; to trafficking in various contexts and forms, including sale by parents; and the search for better economic opportunities”. (General Comment No. 6, 2005, p.4)

Based on the content of the General Comment, it should also be noted that unaccompanied minors are at higher risk, *inter alia*, of possible sexual exploitation or abuse, military recruitment, child labor, etc. Unaccompanied minor girls are at particular risk of gender-based violence. In some cases, it is noted, that it is sometimes particularly difficult for border guards to identify the age of unaccompanied minors; sometimes they are not allowed to take part in asylum procedures or their asylum applications are not processed due to insufficient age or gender.

The number of unaccompanied minors in the European Union is also growing significantly. In 2020 there were 13,600 asylum applications for unaccompanied minors in the European Union; 9.6% of all minors were unaccompanied (see Figure 1). In some Member States of the European Union, the share of unaccompanied minors in 2020 was less than 50 percent. Five Member States recorded higher rates: Portugal (50.0%), Slovakia (56.3%), Romania (62.2%), Bulgaria and Slovenia (both - 71.0%).

Distribution of minor asylum applicants (non-EU citizens) by status, 2020



Note: calculation is based on exact figures (not rounded).
No calculations made for Czechia, Estonia, Latvia, Lithuania, Hungary, Liechtenstein and Iceland as the number of unaccompanied minors is less than 5.
Source: Eurostat (online data codes: migr_asyappctza and migr_asyunaa)



Figure 1. Distribution of minor asylum applicants (non-EU citizens) by status, 2020

Source: Eurostat, 2020, p.8

Unaccompanied minors - the case of Lithuania

Until now, the numbers of both illegal immigrants and unaccompanied minors in Lithuania have not been significant, but currently Lithuania is no exception, especially the numbers have increased since the end of May 2021. According to the data of the Department of Statistics, this year in Lithuania until September 2021, more than 4 thousand immigrants came to Lithuania illegally crossing the border. After the introduction of reversal procedures, 2,576 illegal migrants were not allowed to enter Lithuania as they tried to cross the Lithuanian border from the Republic of Belarus.

It is also announced, that one in four migrants who arrive to Lithuania is a minor. About 500 children under the age of 10 and about 850 minors between the ages of 10 and 18 came to Lithuania (see Figure 2) from May to October of 2021 (Department of Statistics, 2021).

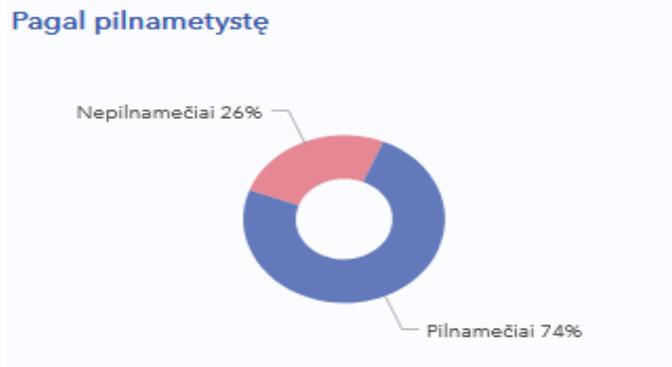


Figure 2. Minor immigrants (%), 2021
 Source: State Data Management IS, 2021

The main legal act regulating the legal status of all aliens in the Republic of Lithuania is the Law on the Legal Status of Aliens. Article 32 of the said law regulates the legal status of all unaccompanied minors, distinguishes this group of aliens as vulnerable and establishes special admission procedures (establishment of temporary custody) and rights (to education, medical assistance, legal aid).

On 23 April 2014 regulation on “Unaccompanied minor aliens who are not asylum seekers established in the Republic of Lithuania the procedure for age identification, accommodation and other procedural actions and provision of services to them” was confirmed by the order of the Minister of Social Security and Labor, the Minister of the Interior and the Minister of Health (current wording No. A1-538 / 1V-780 / V-1067 of 18 September 2019).

Procedure for entry into the Republic of Lithuania. Entry to the Republic of Lithuania legally through border control points is mandatory. The general conditions for entry into the Schengen area are set out in Article 5 of the Schengen Borders Code: “External borders may be crossed only at border crossing points and during the fixed opening hours. Border crossing points that are not open 24 hours a day must clearly indicate the opening hours. By way of derogation from the obligation to cross the external borders only during the opening hours of the border crossing points, exceptions may be granted to: (a) persons or groups of persons in particular need required by national law, without prejudice to the interests of public policy and internal security of the Member States. Member States may lay down specific arrangements in bilateral agreements; (b) for persons or groups of persons in unforeseen emergencies (...)”.

Under the provisions of the Schengen Borders Code, Member States have the right, in accordance with their national law, to impose effective, proportionate and dissuasive sanctions for the unauthorized crossing of external borders at non-designated border crossing points and during non-designated opening hours.

Article 77 of the Law on the Legal Status of Aliens, Paragraph 3 stipulates, that unaccompanied minor asylum seekers may not be refused entry. They must in all cases be granted temporary territorial asylum. Unaccompanied minors who have not lodged an application for asylum may be refused entry if they do not comply with the provisions of Article 5 of the aforementioned Schengen Borders Code. In these cases, the state decides on a case-by-case basis. However, there is always a risk that an unaccompanied minor at high risk will be left without protection.

Who is that unaccompanied minor? According to the legal regulation of legal status of aliens of the Republic of Lithuania: “An unaccompanied minor alien is an alien under the age of 18 who entered the Republic of Lithuania without parents or other legal representatives or

who remained in the Republic of Lithuania without them until those persons began to take effective care of him." (Legal act of Republic of Lithuania „Legal Status of Aliens“, 2021).

Unaccompanied minor aliens, regardless of the legality of their stay in the territory of the Republic of Lithuania, shall be immediately appointed a representative during their stay in the territory of the Republic of Lithuania.

During their stay or residence in the Republic of Lithuania, unaccompanied minors have the following rights:

- ✓ be provided with free accommodation and be maintained in the Republic of Lithuania;
- ✓ study according to a general education or vocational training program;
- ✓ to receive necessary medical care free of charge;
- ✓ free access to social services;
- ✓ use state-guaranteed legal aid;
- ✓ to contact representatives of non-governmental or international organizations of the Republic of Lithuania. (Legal act of Republic of Lithuania „Legal Status of Aliens“, 2021).

Upon receipt of information on an identified unaccompanied minor alien, the Migration Department, together with the authorized institutions and organizations and the representative of the unaccompanied minor alien, shall immediately organize a search for his / her family members and issue him / her alien registration certificate no later than within 2 working days. (Legal act of Republic of Lithuania „Legal Status of Aliens“, 2021).

Asylum procedures. Asylum applications in Lithuania may be submitted to the Migration Department (if the alien is already in the territory of the Republic of Lithuania), the State Border Guard Service (border control points of the Republic of Lithuania or the territory of the Republic of Lithuania where the border legal regime applies) or the Aliens Registration Center. The request may be made in writing or orally (if the request is made orally, the text of the request must be recorded by the official). (Legal Status of Aliens, 2021).

The requested authority shall inform the territorial unit for the protection of the rights of the child, which shall appoint a temporary guardian of the child. At the same time, the requested authority shall perform initial actions (initial actions are performed in the presence of an authorized representative and a representative of the child protection institution):

- ✓ accepts the request,
- ✓ interviews,
- ✓ take fingerprints (at least 14 years old),
- ✓ takes pictures,
- ✓ sends the collected information to the Migration Department.

All actions must be completed within 24 hours. (Legal Status of Aliens, 2021).

Migration Department within 48 hours decide on the admission of the unaccompanied minor and start examining the application on the merits. Asylum applications must be processed within a period of 3 months, but applications from unaccompanied minors are processed more quickly in practice. Unaccompanied minors are accommodated in the Refugee Reception Center (under the Ministry of Social Security and Labor) during the examination of the application. After accommodating an unaccompanied minor (whether applying or not applying for asylum) at the Refugee Reception Center, the Centre's officials organize not only the accommodation of minors, but also education, health care and other services. Unaccompanied minors receive a food allowance of EUR 60 per month and a pocket allowance of EUR 10.

However, an unaccompanied minor who arrive does not always applie for asylum. If an unaccompanied minor does not apply for asylum, the already mentioned provisions of Article 32 of the Law on the Legal Status of Aliens (concerning unaccompanied minors) apply to all minors without exception. It should be noted that until 2014, there was no detailed regulation of unaccompanied minors who did not apply for asylum. Therefore, the reception and accommodation practices of this group were different. At 23 of April of 2014 procedures have been adopted governing the age determination, accommodation, definition and harmonization of the procedures applicable to these minors.

The age of all unaccompanied minors is determined from documents or from the words of an alien during the interview. An age determination examination (X-ray examination) may be performed only when there are reasonable doubts about the age of an unaccompanied minor alien and only with his or her consent. The conclusion of the X-ray examination provides for an error of up to two years. In the event of an error, the person is considered to be a minor. When it was mentioned, unaccompanied minors are accommodated in the Refugee Reception Center where they have unrestricted freedom of movement. Unaccompanied minors who do not apply for asylum and whose main purpose of entry is transit through Lithuania, in the vast majority of cases leave the Refugee Reception Center and are likely to go to other European Union countries to reunite with their family or for financial reasons.

The situation of unaccompanied minors over the age of 18 is changing as they become adults. In practice, only unaccompanied minors granted asylum receive adulthood and live in a Refugee Reception Center. If such a person continues to fulfill the conditions for asylum, he or she shall have additional protection every year and his or her temporary residence permit shall be amended. However, there may be cases where eighteen-year-olds can be returned or expelled if they can no longer stay legally in the country.

Law on the Legal Status of Aliens Article 129 provides that an unaccompanied minor who is illegally in Lithuania may be "returned only if he or she is properly cared for in the foreign state to which he or she will be returned, taking into account his or her needs, age and level of independence". If it is not possible to identify the parents of an unaccompanied minor who has not applied for asylum, he or she shall be issued a temporary residence permit. In resolving the issue of return of an unaccompanied minor alien, co-operation is established with foreign states and international organizations in accordance with concluded international agreements. Cases of return or transfer of unaccompanied minors have not been statistically recorded in Lithuania so far.

Conclusions

An analysis of the legal provisions on unaccompanied minors leads to the conclusion, that the legal framework covers all possible procedures required for the arrival of an unaccompanied minor, but unaccompanied minor aliens are not guaranteed full protection and best interests, as the freedom of movement of unaccompanied minors accommodated in the Refugee Reception Center is not restricted and they always have the opportunity to leave the center at the desired time. This means, that the freedom of movement of an unaccompanied minor may also tempt him or her to leave the country and continue his or her journey to other states, where the unaccompanied minor can easily become a victim of trafficking, slave labor or sexual exploitation.

No data are available about detained unaccompanied minor aliens after they have left the Refugee Reception Center, so it can also be concluded that the current practice of the protection of unaccompanied minors and the best interests of the child properly implemented.

References

1. Asylum in Lithuania in 2018. Annual report. Vilnius, 2019. https://migracija.lrv.lt/uploads/migracija/documents/files/Statistika/Prieglobstis/Metin%C4%97s%20ataskaitos/Ataskaita_2018%20m.pdf (Accessed: 30 September 2021)
2. Asylum seekers (2021). <https://osp.stat.gov.lt/statistiniu-rodikliu-analize?hash=c32388b4-26f1-4249-a031-9ff3801d52d5#/> (Accessed: 30 September 2021)
3. Asylum statistics. Eurostat. Statistics Explained. (2021). https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics&oldid=539013#Applications_by_unaccompanied_minors (Accessed: 30 September 2021)
4. Convention on the Protection of the Child <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.19848> (Accessed: 01 October 2021)
5. General Comment No.6 (2005) <https://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf> (Accessed: 30 September 2021)
6. International migration flows (2021). <https://osp.stat.gov.lt/statistiniu-rodikliu-analize?hash=7ae84706-e252-40de-85d8-35baecbb038#/> (Accessed: 01 October 2021)
7. King, Shani M. (2020) Unaccompanied Minors, Statutory Interpretation, and Due Process [article]. *California Law Review*, Vol. 108, Issue 1 (February 2020), pp. 1-62.
8. Laso, Antonio Andres (2020) *Foreign Unaccompanied Minors* https://heionline-org.skaitykla.mruni.eu/HOL/Page?collection=journals&handle=hein.journals/rvjcasle53&id=11&men_tab=srchresults Revista Juridica de Castilla y Leon No.50 ISSN 2254-3805, pp.7-48. (Accessed: 01 October 2021)
9. Law of the Republic of Lithuania on the Legal Status of Aliens. <https://www.e-tar.lt/portal/lt/legalAct/TAR.42837E5A79DD/asr> (Accessed: 30 September 2021)
10. Monitoring of illegal migration. State Data Management IS (from 2021-01-01) <https://ls-osp-sdg.maps.arcgis.com/apps/dashboards/9b0a008b1fff41a88c5efcc61a876be2> (Accessed: 01 October 2021)
11. Minister of Social Security and Labor of the Republic of Lithuania Minister of the Interior of the Republic of Lithuania Minister of Health of the Republic of Lithuania. Order „Regarding the Minister of Social Security and Labor of the Republic of Lithuania, the Minister of the Interior of the Republic of Lithuania and the Minister of Health of the Republic of Lithuania April 23, 2014 Order No. A1-229/1V-289/V-491 „, Regarding the amendment of the Description of the Procedure for Determining the Age, Accommodation and Other Procedural Actions of Unaccompanied Minor Aliens Identified in the Republic of Lithuania: September 18, 2019 Order No. A1-538/1V-780/V-1067 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/3bf36e03d9e811e9a85be81119c7a8fa> (Accessed: 30 September 2021)
12. Reception and accomodation of unaccompanied minors. (2017) <https://mipas.lt/2017/08/23/nelydimu-nepilnameciu-priemimas-ir-apygvendinimas/> (Accessed: 30 September 2021)
13. Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders

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- (Schengen Borders Code) (codification). <https://eur-lex.europa.eu/eli/reg/2016/399/oj>
(Accessed: 01 October 2021)
14. Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 <https://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:32019R1896&qid=1633113327293&from=LT>
(Accessed: 30 September 2021)
 15. Shields, Liz (2017) Representing Unaccompanied Minors in Deportation Proceedings *Litigation*, Vol. 43, Issue 2 (Winter 2017), pp. 23-27